

**IEU SUBMISSION TO THE SENATE
EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION
REFERENCES COMMITTEE**

**INQUIRY INTO THE PROVISIONS OF THE WORKPLACE
RELATIONS AMENDMENT (SMALL BUSINESS
EMPLOYMENT PROTECTION) BILL 2004**

FEBRUARY 2005

INTRODUCTION

1. The Independent Education of Australia (the IEU) has prepared this submission for the Senate Employment, Workplace Relations and Education References Committee's Inquiry into the provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004.
2. Having had the opportunity of reading the ACTU submission to this Inquiry, the IEU wishes to place on record its support and endorsement of the ACTU's submissions and our opposition to the Bill.
3. The expressed rationale for this Bill is to "rectify a flawed decision of the AIRC"¹ and "shield small businesses from the AIRC decision"² in respect to redundancy payments in workplaces where there are less than 15 employees. The IEU rejects this argument and the Bill on the following grounds:
 - i. The AIRC decision followed exhaustive analysis of a wealth of research, argument, and evidence tendered by all stakeholders to develop a new test case standard.
 - ii. Industrial regulation should not be overturned simply because the presiding political power does not agree with it.
 - iii. The Bill goes further than removing what it perceives as the offending elements of this decision.
 - iv. The AIRC decision limited employees' rights if they came from a small workplace, and the Bill removes them altogether.

¹ Mr Andrews, Minister for Employment and Workplace Relations and Minister assisting the Prime Minister for the Public Service, Second Reading, December 8, 2004.

² *ibid*

- v. A significant proportion of workplaces covered by the IEU would be affected by the Bill should it be enacted, as the Bill will also exclude constitutional corporations that employ less than 15 employees from redundancy payments that they formerly would have been able to access through more equitable state laws, awards or authorities.

Background to the IEU

- 4. The IEU is a federally registered organisation pursuant to the provisions of the *Workplace Relations Act 1996* and operates in the non government education industry which comprises Catholic and other independent schools, pre schools and kindergartens, English and Business Colleges. The union's membership of approximately 60,000 consists of teachers, principals, teacher aides, education support staff, clerical and administrative staff and other ancillary staff such as cleaners and grounds and maintenance staff.
- 5. The IEU and its branches and Associated Bodies are party to numerous awards and certified agreements. The awards and agreements applying to schools in Victoria, the ACT and the Northern Territory are federal awards. Other federal awards to which the union is a party cover English and Business Colleges across most states and the ACT.
- 6. The IEU is strongly committed to an orderly and fair approach to industrial regulation for all education workers. The union is also open and responsive to a flexible system of industrial relations which recognises the particular history, ethos, organisational and professional practices of the various educational institutions in our sector. This is evident in the substantial number of awards and certified agreements negotiated by the union under the present system of industrial relations.

7. The non government education sector is a significant and diverse one. In the schools area alone there are approximately 2,670 non government schools, of which approximately 1700 are Catholic Schools. There are approximately 1350 system and individual employing authorities. The sector employs approximately 80,000 staff (FTE). Non government schools are often affiliated with groups which have particular educational, ethnic or religious philosophies.

Impact of the Bill

8. Approximately one third of schools in the non government schools sector operate in the federal jurisdiction. Colleges which provide English Language Intensive Courses for Overseas Students (ELICOS) are respondent to federal awards. There are approximately 90 of such accredited institutions operating in the non government sector. Of the significant number of child care institutions in which the IEU has coverage approximately 65 are respondent to a federal award.
9. The IEU estimates that a significant proportion of schools, child care institutions and ELICOS colleges in every state and territory would have less than 15 employees. In Victoria, more than 80% of employers are parish priests who act as employer in respect of a single parish primary school. Staffing schedules are tight, and a small decline in student enrolments can trigger a forced redundancy. If the Bill is made law, a staff member in a small Catholic primary school, under the federal legislation, would have no award rights to redundancy payments.
10. Even if that employee has an entitlement to redundancy payments by way of a certified agreement the underpinning principles in the legislation that

is supposed to provide a fair and adequate safety net for all employees in Australia, would not exist.

11. There are a significant proportion of religious and independent schools in Western Australia, Victoria and the Northern Territory that have consistently refused to bargain with their staff, and where the capacity for employees to achieve improvements through a certified agreement is non-existent. Even where market rates may be paid for wages, staff are dependent on the award for all other conditions such as parental leave, personal leave, long service leave, and redundancy benefits.
12. With the exception of NSW, there are only a handful of certified agreements covering staff who work in private ELICOS colleges. Many of these colleges are small workplaces. The proposed Bill will weaken even further these employees' rights under law to compensation for being made redundant.

The AIRC Decision

13. As outlined in the ACTU submission, the AIRC Redundancy Case decision examined exhaustively the question of whether small workplaces should be exempt from paying redundancy payments, consulting appropriately with employees who are to be made redundant, and gave several reasons why such an exemption was unfair, arbitrary, and had no evidentiary basis.
14. The Decision did however set the standard of payments lower for smaller workplaces.
15. The AIRC decision was viewed by the IEU as disappointing in that it differentiated between small workplaces and larger ones. For many years

the IEU has expressed a consistent view to this Committee and other forums that it is inherently a denial of natural justice to have differing outcomes of access, appeal and outcome in the laws of Australia based on political and arbitrary factors rather than values of fairness and egalitarianism.

16. In submissions to this Committee in 2003 relating to proposed legislative exemptions for small businesses from unfair dismissal claims (now firmly back on the legislative agenda again), the IEU argued that

“The amount of compensation awarded in any successful unfair dismissal claim should not be limited by the size of the business, nor is a small workplace and the financial capacity to pay appropriate compensation mutually exclusive. The Commission should be free to determine in respect of every application whether procedural fairness was afforded to the employee by the employer.”³

17. The IEU’s position on whether redundancy payments should be linked to the size of a workplace is the same. Notwithstanding, it is the IEU’s view that the further step envisaged by this Bill of effectively overriding the considered decision of the AIRC and removing any payments at all for an employee in a small workplace, is clearly unfair and discriminatory.
18. Further, the proposed Bill seeks to eliminate existing rights under the Act in a range of areas:
 - i. It seeks to override existing state avenues of redress for employees of constitutional corporations where there are less than 15 employees. It is the IEU’s understanding that a significant proportion of the schools

³ IEU Submission, Para 6.2, Workplace Relations Amendment (Termination of Employment) Bill 2002.

sector and other areas of the union's coverage across Australia may fall into this category.

- ii. It seeks to prevent the Commission from using its discretion and issuing an order for redundancy pay or by making an exceptional matters order where it is clear that otherwise there would be an unjust and harsh outcome for employees by amending those parts of the Act that give effect to the ILO Termination of Employment Convention and Section 89A respectively.
 - iii. It seeks to redefine how the number of employees may be counted in a redundancy situation, excluding from previous calculations all casuals excepting those with 12 months systematic employment.
19. The inherent discrimination in the effect of the Bill is clear, as is the relentless and artificial priority given to the needs of small business, at the expense of the industrial rights and protections that should be afforded to all Australian employees.

The IEU urges the Committee to reject the Bill.